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E-FILED: 10-22-10

Attorneys for Debtors James B. Haggerty
and Rachel M. Haggerty

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

CASE NO. BK-N-10-52832
CHAPTER 13

JAMES B. HAGGERTY and
RACHEL M. HAGGERTY,

MOTION TO VALUE COLLATERAL

Debtors.

Hearing Date: 12-3-10
Hearing Time: 2:00 p.m.

Debtors James B. Haggerty and Rachel M. Haggerty, by and through their attorneys, Kilpatrick, Johnston & Adler, hereby move this Court to establish the value of their residential real property at 764 Monico Drive in Dayton, Nevada at \$122,500 for the purpose of treating the claim of US Bank National Association, as Trustee for SASCO 2005-WF4 ("US Bank National"), secured by a second deed of trust against the property, as a general non-priority unsecured claim under their Chapter 13 Plan. This motion is made pursuant to Fed. R. Bank. Pro. 3012 and 11 U.S.C. §506(a), and is based on the Debtors' Chapter 13 Petition, Chapter 13 Plan on file herein, the attached Exhibit A, the attached Declaration of James B. Haggerty ("Haggerty Declaration"), and any evidence that may be presented at the hearing of this motion.

POINTS AND AUTHORITIES

1. Facts

The Debtors own a residence located at 764 Monico Drive in Dayton, Nevada. They purchased the home in June of 2005 for \$246,000. The residence is a 4 bedroom, 2 bath home of 1,440 square feet. (Haggerty Declaration, ¶ 3) The Debtors financed the purchase by borrowing \$196,800 from Wells Fargo Bank, N.A. on a note secured by a first deed of trust, and by borrowing an additional \$49,200 from Southstar Funding, LLC on a note secured by a second deed of trust against the property. (Haggerty Declaration, ¶ 4) Debtors are informed and believe that the note to Wells Fargo Bank, N.A. on the first deed of trust loan was subsequently acquired by HSBC Bank USA National Association, as Trustee for Wells Fargo Asset Securities Corporation Home Equity Asset-Backed Certificates Series 2005-2. ("HSBC Bank USA National"), and that the note to Southstar Funding, LLC on the second deed of trust loan was subsequently acquired by US Bank National. (Haggerty Declaration, ¶ 5) As of July 19, 2010, the date of filing of the petition, HSBC Bank USA National has represented that the principal balance due on the note secured by the first deed of trust was \$190,355.15. (Proof of Claim #2, filed 7/23/10) As of July 19, 2010, US Bank National has represented that the balance due on the note secured by the second deed of trust was \$51,921.01. (Proof of Claim #5, filed 7/29/10) Since June of 2005, the value of the Debtors' home at 764 Monico Drive has fallen dramatically. Based on an estimate obtained on line from zillow.com, the Debtors in their petition listed the current value of their home at \$122,500, which they believe was a reasonable estimate of the fair market value at the time their petition was filed on July 19, 2010. (Voluntary Petition, Schedule A; Haggerty Declaration, ¶¶ 6-8)

2. Argument

Fed. R. Bank. Pro. 3012 provides that the court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in

interest. The value of collateral sets the upper bound on the amount of a secured claim in the case. 11 U.S.C. § 506(a). A debtor as a lay witness may opine regarding the value of property owned by the debtor where his opinion is rationally based on his perception, helpful to a determination of a fact in issue, and not based on scientific, technical or other specialized knowledge. Fed. R. Evid. 701. Knowing the amount and character of claims is vital to assessing the feasibility of a Chapter 13 plan under 11 U.S.C. §1325(a)(6) and determining whether treatment accorded to secured claims complies with 11 U.S.C. §1325(a)(5).

In this case, the Debtors assert that as a result of the reduction in the market value of their residence, the claim of US Bank National for \$51,921.01 on the note secured by the second deed of trust was wholly unsecured at the time of filing of their Chapter 13 petition, taking into consideration the claim of HSBC Bank USA National for \$190,355.15 on the note secured by the first deed of trust. Therefore, the Debtors in their proposed Chapter 13 Plan have treated the claim of US Bank National on the note secured by the second deed of trust as a general non-priority unsecured claim.

A wholly unsecured lien on a debtor's primary residence may be stripped off in a Chapter 13 proceeding pursuant to 11 U.S.C. §1322(b)(2). *Zimmer v. PSB Lending Corporation (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002). However, Debtors are not requesting at this time that the second deed of trust held by US Bank National be stripped from their property, and have proposed that the second deed of trust remain of record until the plan is completed. At that time, the Debtors will file an adversary proceeding to strip the lien if US Bank National is unwilling to reconvey its deed of trust.

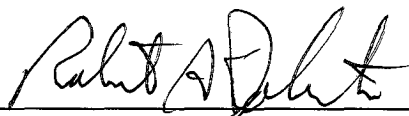
3. Conclusion

The Debtors respectfully request the Court issue its order establishing the value of their residence at 764 Monico Drive in Dayton, Nevada to be \$122,500 as of July 19, 2010, for the purpose of treating the claim of US Bank National for amounts due on the note secured by the

second deed of trust against the property as a general non-priority unsecured claim under the Debtors' Chapter 13 Plan.

DATED this 22nd day of October, 2010.

KILPATRICK, JOHNSTON & ADLER
412 North Division Street
Carson City, NV 89703

By: 
Robert G. Johnston, Esq.

Attorneys for Debtors James B. Haggerty
and Rachel M. Haggerty

Map

US Nevada Lyon City

Views: 5

Show

View home on larger map

Local amenities provided by:

Get mortgage quotes anonymously on Zillow Mortgage Marketplace.

Zestimate®

Schools

764 Monico Dr

Grocery Stores

Coffee and

Bakery

Zestimate®:

\$122,500

Value Range:

\$97K - \$140K

Parks

Monthly payment:

\$494

Restaurants

Gas Stations

Property type: Single Family

Bedrooms: 4

Bathrooms: 2

Enter address... 1,440

12,196 sq ft / 0.28

acres

Duration: 2003

Year built: 2003

Distance: --

Parking type: --

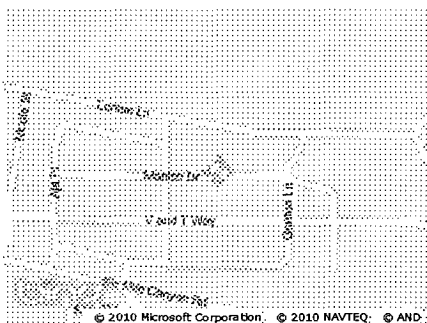
Cooling system: --

Heating system: --

Fireplace: --

Last sold: June 23 2005

MLS number:



No photos available for this property

Description

This 1440 square foot single family home has 4 bedrooms and 2.0 bathrooms. It is located at 764 Monico Dr Dayton, Nevada. This home is in the Lyon School District. The nearest schools are Sutro Elementary School, Dayton Intermediate School and Dayton High School.

More facts

Post for sale/rent

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Map

Charts and Data

	Value	Range	30-day change	\$/sqft	Last updated
Zestimate®	\$122,500	\$97K - \$140K	+\$2,500	\$85	07/13/2010
My estimate	Create estimate				
Owner Comment	Post a comment				

Show

Zestimate (\$)

Zestimate (%) change)

Listing price

Tax assessment

Tax paid

Page views

Time period

1 month

1 year

5 years

10 years

Compare 89403 to
nearby areas

Price History

Date	Description	Price	% Chg	\$/sqft	Source	
06/23/2005	Sold	\$246,000	--	\$170	Public Record	

Maps and Views
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

JAMES B. HAGGERTY and
RACHEL M. HAGGERTY,
Debtors.

Case No. BK-N-10-52832
Chapter 13

**DECLARATION OF
JAMES B. HAGGERTY**

JAMES B. HAGGERTY, being first duly sworn, deposes and says:

1. I am the Debtor in this case with my wife, Joint Debtor Rachel M. Haggerty. I have personal knowledge of the matters herein and can competently testify to these matters if called upon to do so.
2. This declaration is made in support of our Motion to Value Collateral ("Motion").
3. We own a residence located at 764 Monico Drive in Dayton, Nevada. We purchased the home in June of 2005 for \$246,000. Our residence is a 4 bedroom, 2 bath home of 1,440 square feet.
4. We financed the purchase of our home by borrowing \$196,800 from Wells Fargo Bank, N.A. on a note secured by a first deed of trust, and by borrowing an additional \$49,200 from Southstar Funding, LLC on a note secured by a second deed of trust.
5. Based on proofs of claim filed in this case, I am informed and believe that the note to Wells Fargo Bank, N.A. on the first deed of trust loan has been acquired by HSBC Bank USA National Association, as Trustee for Wells Fargo Asset Securities Corporation Home Equity Asset-Backed Certificates Series 2005-2 ("HSBC Bank USA National"), and that the note to Southstar Funding, LLC on the second deed of trust loan has been

acquired by US Bank National Association, as Trustee for SASCO 2005-WF4. ("US Bank National")

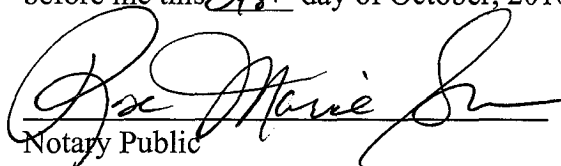
6. Since June of 2005, the value of our home at 764 Monico Drive has fallen dramatically. In our bankruptcy petition, we listed the current value of our home at \$122,500. Our valuation was based on an estimate we obtained on-line from Zillow.com.
7. Attached as Exhibit A to our Motion is a Zestimate obtained from Zillow.com, last updated July 13, 2010, estimating the value of our home at \$122,500, with an estimated range of \$97,000 to \$140,000.
8. Based on this estimate, I believe \$122,500 was a reasonable estimate of the fair market value of our home at the time we filed our bankruptcy petition on July 19, 2010.

DATED this 21st day of October, 2010.



JAMES B. HAGGERTY

SIGNED AND SWORN TO (or affirmed)
before me this 21st day of October, 2010.



Notary Public

